IN THE

Supreme Court of the United States

OCTOBER TERM, 1952.

No. 193 and No. 194.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO, An Unincorporated Voluntary Association, and FORD MOTOR COMPANY, *Petitioners*,

v.

GEORGE HUFFMAN, Individually, and on behalf of a class, etc., *Respondents*.

On Petition for a Writ of Certiorari To The United States Court of Appeals for the Sixth Circuit.

MOTION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE

VETERANS OF FOREIGN WARS OF THE UNITED STATES,
Amicus Curiae.

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MOTION FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Now comes the Veterans of Foreign Wars of the United States and respectfully moves this Court, pursuant to Rule 27, paragraph 9, of the Rules of this Court, for leave to file the accompanying brief in this case *amicus curiae*. The consents of the attorneys for the petitioners herein to the

the Constitution, but a right only when it is established by contract, or by statute in particular cases (*e. g.*, the servicemen's reemployment statutes). Formally and enforceably seniority today is the product of collective bargaining agreements made between unions and employers. The Courts have held that seniority rights established in one agreement may be altered or amended by a later agreement. *Woolridge et al. vs. Denver & Rio Grande Western R.R. Co.*, (1948), 118 Colo. 25, 191 Pac. (2d) 882. These principles have been recognized by this Court in *Aeronautical Industrial Lodge 727 vs. Campbell*, 337 U.S. 521, as follows:

> "Barring legislation not here involved seniority rights derive their scope and significance from union contracts, confined as they almost exclusively are to unionized industry. See *Trailmobile Co. vs. Whirls*, 331 U.S. 40, 53, n. 21. There are great variations in the use of the seniority principle through collective bargaining bearing on the time when seniority begins, determination of the units subject to the same seniority, and the consequences which flow from seniority. All these varitions disclose limitations upon the dogmatic use of the principle of seniority in the interest of the ultimate aims of collective bargaining. Thus, probationary conditions must often be met before seniority begins to operate; sometimes it becomes retroactive to the date of employment; in other insfances it is effective only as from the qualifying date; in some industries it is determined on a company basis, in others the occupation or the plant is taken as the unit for seniority determination; sometimes special provisions are made for workers in key positions; and then again these factors are found in varying combinations."

Section 159 National Labor Relations Act, as amended,

29 U.S.C., Sec. 159, made seniority a subject of bargaining between Ford and the Union when it provided:

> "(a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: * * * ."

As the result of such collective bargaining the contracts gave veterans, not previously employed by Ford, seniority credit for military service, provided they were not employees of any other persons or companies at the time of entry into the armed forces.

Seniority credits to former employees of Ford for time spent in military service is required by Federal Statutes. Seniority credits for military service to veterans not previously employed by Ford have been granted through the process of collective bargaining. This was a good-faith attempt by Ford and UAW-CIO to adjust seniority credits to a place where they would have fallen had it not been for the abnormal conditions created by World War II. It is no more discriminatory to make the assumption that a post-service employee would have obtained employment at Ford had it not been for his military service, and to recognize seniority thereon, than it is to assume that the former employee would have continued to work for Ford during the entire time of his military service and to pass a statute requiring recognition of seniority credits on such service.

This Court ruled in the *Aeronautical Industrial District Lodge* case (*supra*) that a collective bargaining agreement giving top seniority to union chairmen in the event of layoffs was non-discriminatory. Such difference in

treatment of employees was held to be valid. Other courts have also held that differences in treatment of some segments of unions as compared with others do not in themselves constitute statutory discrimination. *Fries vs. Pennsylvania R.R. Co.*, 195 F. 2d 445; *Foster vs. General Motors Corporation*, 191 F. 2d 907; *Britt vs. Trailmobile Company*, 179 F. 2d 569, certiorari denied, 340 U.S. 820; *Haynes vs. United Chemical Workers, CIO*, 190 Tenn. 165, 228 S.W. 2d 101; *Schlenk vs. Lehigh Valley R.R. Co.*, 74 F. Supp. 569. Certainly any incidental differences of treatment between employees that may occur in the adjustment of a seniority system to eliminate from it inequities which have been caused by abnormal conditions must be upheld under such holdings.

III

The Circuit Court Has Failed To Rule On The Status Of Non-veterans In Huffman's Class

The petition does not limit the class represented by Huffman to veterans employed by Ford prior to their entry in the armed forces (R. 5). Paragraph 9 of the petition describes the persons in "Class A" as Huffman and approximately 275 other employees of Ford's Louisville, Kentucky, plant. It does not specify that all those persons were veterans. The description is broad enough to include non-veterans.

Throughout its opinion the Circuit Court has left the impression that the provision in the collective bargaining agreements was discriminatory as to veterans only.

For instance, the Court said (R. 34): "The question squarely presented is whether the union and management can by contract create preferential seniority in men not employed when they entered the armed services as against

men, also veterans, who were employed when they entered the armed services."

The Court also said (R. 36): "No evidence was presented on the question but we assume that both the union and Ford, in executing this bargaining contract, had a well-meaning desire to protect veterans who had had no chance for employment prior to their service in the armed forces. But in so doing they clearly discriminated against other veterans who had entered the military service when already employed by Ford."

At the end of its opinion the Court said "The contract is invalid as to Huffman and those veterans similarly situated."

It has already been pointed out (*supra*) that the Circuit Court has ruled that the provision in the collective bargaining agreement under consideration was not violative of Huffman's rights under the Selective Training and Service Act of 1940, as amended. If that is the case, what did the Circuit Court have in mind when it held that the agreement was invalid "as to Huffman and those veterans similarly situated"? What about the status of non-veterans in Huffman's class? Since the Court based its finding of discrimination on the National Labor Relations Act, it would appear that there should be no distinction between claims of veterans as compared to those of non-veterans. Nothing in the Act seems to warrant such a distinction. Because of the vast importance of the case at bar, this Court should answer the questions raised under this sub-heading, otherwise the confusion will generate considerable litigation in the future.

IV.
The Provision In Question Is Consistent With Sound Public Policy

Congress has in many instances enacted laws granting veterans benefits based on their service in the armed forces. The reemployment benefits in the Selective Training and Service Act has been discussed (*supra*). The Universal Military Training and Service Act, 50 U.S.C. App., Sections 451-473 contains similar reemployment provisions. Other acts conferring special benefits upon veterans are the Veterans' Preference Act, 5, U.S.C., Sections 851 to 859, and the Servicemen's Readjustment Act, 38 U.S.C., Sections 693 et seq. Under the Veterans' Preference Act, in addition to granting extra points to veterans in civil service examinations, such preferences are extended to their wives, widows and mothers under certain circumstances.

It is needless to indulge in a discussion of the merits of the laws passed for the benefits of men and women who have sacrificed their time and opportunity and have risked their lives in the service of their country. No doubt these thoughts motivated Ford and UAW-CIO to extend seniority rights to veterans not previously employed. The Circuit Court recognized that both Ford and the Union, in executing the agreements under consideration, probably had a well-meaning desire to protect veterans who had had no chance for employment prior to their service in the armed forces (R. 36).

Another factor which must have induced the Company and the Union to include the provision in question in their collective bargaining agreements was the bulletin issued October 7, 1940 by the Retraining and Reemploy-

ment Administration of the U. S. Department of Labor. In its Statement of Employment Principles the Administration urged the allowance of seniority credit to newly hired veterans for the purpose of job retention equal to their time spent in the armed services. This recommendation appeared in the following language:

> "13. Newly hired veterans who have served a probationary period and qualified for employment should be allowed seniority credit, at least for purposes of job retention, equal to time spent in the armed services plus time spent in recuperation from service-connected injuries or disabilities either through hospitalization or vocational training."

The foregoing legislative and administrative history establishes beyond doubt that the seniority credit principles incorporated in the Ford contracts were based on sound public policy and should not have been adjudged discriminatory by the Circuit Court.

Respectfully submitted,

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APPENDIX A

STATUTES

National Labor Relations Act, as amended, 29 U.S.C., Sec. 141 et seq.

"*Sec. 157. Rights of employees as to organization, collective bargaining etc.*

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158 (a)(3) of this title."

"*Sec. 158. Unfair Labor Practices*

(a) It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 157 of this title:

(2) • • •

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: • • •

• • • • • •

(b) It shall be unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 157 of this title: • • • or (B) an employer in the selection of his representatives for the purposes of collective bargaining for the adjustment of grievances;

(2) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) of this section • • • "

• • • • • •

"*Sec. 159. Representatives and Elections* • • •

(a) Representatives designated or selected for

the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment:"

Selective Training and Service Act of 1940, as amended, 50 U.S.C. App., Sec. 308

"Sec. 308(c) Any person who is restored to a position * * * shall be considered as having been on furlough or leave of absence during his period of training and service in the land or naval forces, shall be so restored without loss of seniority * * *."

APPENDIX B

TABLE OF CASES

TABLE OF CASES (cont'd.)

Opinions Below.

The opinions delivered in the Court of Appeals are reported in 195 F. 2d 170. The opinion of the District Court has not been reported (R. 26).

Interest of *Amicus Curiae*.

This *amicus curiae*, Chrysler Corporation, has for many years manufactured automobiles, trucks and automotive parts and accessories in many of the States of the United States and abroad. It employs more than 100,000 people for whom the respondent union is the exclusive bargaining representative under Section 9 of the National Labor Relations Act, as amended (29 U. S. C., Sec. 159).

In 1944 the standing of veterans whom Chrysler had not theretofore employed was a subject of intense bargaining between Chrysler and the Union. The parties seemed to agree in principle but did not agree in detail.

In 1945, as more veterans came to work for Chrysler as new employees, and as the end of the war increased the problem, Chrysler and the Union continued to explore the matter. Finally, in contract negotiations in the winter of 1945 and 1946, the parties reached agreement on a clause which appeared in their contract dated January 26, 1946. This clause, substantially in the form to which Ford and the Union later agreed, was as follows:

"29. Veterans of World War II who were not formerly employed by Chrysler Corporation

who possess evidence of satisfactory completion of service and make application for employment within ninety (90) days of their discharge from the United States Armed Forces and meet the other qualifications for reinstatement contained in the Selective Training and Service Act of 1940, as amended, and other applicable laws and regulations, shall, upon completion of thirty (30) days employment, receive seniority credit equivalent to their period of service in the Armed Forces in the event of a layoff during their probationary period, and, upon completion of their probationary period, shall be entered upon the seniority lists of their department or division with seniority credit equivalent to their period of military service plus their probationary period."

Chrysler and the Union kept the clause in their later contracts, dated April 26, 1947, and May 28, 1948. In their contract of May 4, 1950, they froze the standing for seniority that employees had under the clause, but did not renew the clause.

Between January 26, 1946, and May 1, 1949, more than 90,000 veterans who had not previously worked for Chrysler had jobs at one time or another in Chrysler's plants. While normal turnover, which is highest among new employees, has greatly reduced this number, nevertheless, Chrysler judges that perhaps five thousand or more of these veterans still work in its plants, with the seniority they acquired under the three contracts above mentioned. They are scattered all through the seniority lists and affect the standing of tens of thousands of employees with earlier hiring dates. Doubtless, many thousands of

those who left had at one time or another advantages under the clause and other employees had disadvantages that they would not have had if the clause in question had not existed.

Obviously, a declaration that the clause is void will bring chaos to the seniority standing of Chrysler's employees, in place of the orderly system that now has been in effect for nearly six and one-half years.

This chaos will prevail in hundreds, if not thousands, of other plants in many industries.

If this Court does not correct the judgment of the Court of Appeals, a great multiplicity of actions for damages, in which the effect of the clause upon each of literally hundreds of thousands of employees will be an issue, will result. The petitioner Union, Ford Motor Company and The Electric Auto-Lite Company already are confronted with such actions. Doubtless many more are in the making.

The only duty against "discriminating" by employers arises under the National Labor Relations Act, which forbids discriminating for union activity. It therefore is difficult for us to see how Respondent employees could recover from employers under the clauses in question. Nevertheless, the necessity of revising extensively the seniority rolls, the resulting reshuffling of employees who have been transferred and promoted on the basis of seniority they acquired under the clauses, the flood of grievances that would result and the unrest that would ensue, not to mention the necessity of defending what would be in effect hundreds of thousands of separate suits, would im-

pose staggering and intolerable hardships on the employers as well as upon the unions.

More important than all this, however, would be the effect of the decision, were this Court to allow it to stand, upon the system of collective bargaining in our country. We believe, and we shall show *infra*, that the effect would be to torpedo the National Labor Relations Act and the scheme of collective bargaining that it sets up.

Summary of the Argument.

1. The ruling of the Court of Appeals undermines the whole scheme of the National Labor Relations Act, as amended, and would make impracticable, if not impossible, the kind of collective bargaining that the act requires.

The remedy of the Respondent employees lies in proceedings in their own union to bring about a change in the seniority clauses, or under the National Labor Relations Act to change their bargaining representatives, not by collateral attack in Court on a long-standing, lawful clause of contracts negotiated many years ago pursuant to said Act.

2. If, as the Respondents claim, the clause in question is "null and void and invalid", then the employees have no seniority rights.

filing of this brief have been obtained and filed with the Clerk of the Court. The consent of the attorney for the respondent was requested but was refused. The interest of the Veterans of Foreign Wars of the United States and its reasons for asking for leave to file a brief *amicus curiae* are set forth below.

Movant is an organization, consisting of approximately one million two hundred thousand veterans who have served overseas in one or more of this nation's wars or recognized campaigns and expeditions, and has been chartered by the Congress of the United States (36 USCA 111). Movant was first organized in 1899 and its record for more than fifty years has been one of dedication and service, not only to disabled veterans and the widows and orphans of the deceased, but to the millions of veterans who upon separation from the service seek integration within a peacetime society so that the social and economic dislocation sustained by them upon entry into the service would be reduced to an absolute minimum. Pursuant to this policy, movant has for many years, with particular emphasis on the Post-World War II period, maintained a Division of Employment within the structure of its national headquarters, and has encouraged and fostered the maintenance of Employment Sections in all its subordinate units with the object of hastening the integration of the recently discharged serviceman into civilian employment. The overall objective, as reiterated by its national conventions for many years, has been the placement of the returning serviceman on the civilian "escalator" as nearly as possible at the point he would have occupied had he not been called to the service of the nation in its time of danger.

Movant desires that the accompanying brief be filed on its behalf in order that the Court may have before it the views of a veterans organization whose years of effort in the field of veterans rehabilitation, readjustment, and employment contributed to the decision ultimately reached by petitioners, as well as other similarly inspired, to place the

veteran on the civilian "escalator" with seniority equal to the time he spent in the armed services, notwithstanding that the veteran had not been previously employed.

Petitioners' agreement, the validity of which is the crux of this cause, was the result of a sincere effort on the part of the International Union, UAW-CIO, and the Ford Motor Company, to put into action a well recognized national policy toward the returning veteran. Movant sincerely believes that because of its more than fifty years of experience in the field of veterans benefits it is particularly qualified to present for the Court's consideration a fuller and more complete picture of the genesis and development of this national policy, zealous and patriotic adherence to which by petitioners having resulted in this action. Movant's desire is therefore based on a concern that adequate consideration may not be given to this question unless it is afforded the opportunity of presenting the purely veterans readjustment aspects of the issues involved in this case.

The considerations of public policy toward the questions raised by this cause assume grave proportion in the face of the stepped-up tempo of our defense program which finds thousands of our young men every day being called to the colors to acquire skills and techniques to serve them on a happier day when, with a hastened maturity, they seek their first employment in private industry.

Movant respectfully requests that the motion for leave to file a brief as *amicus curiae* in the instant case be allowed.

Respectfully submitted,

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September 12, 1952.